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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,808	10/25/2005	Hansdieter Greiwe	13027.0058USWO	1150
23552	7590	08/13/2007		
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903				
			EXAMINER MAUST, TIMOTHY LEWIS	
			ART UNIT 3751	PAPER NUMBER
			MAIL DATE 08/13/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/525,808

Applicant(s)

GREIWE ET AL.

Examiner

Timothy L. Maust

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-9 and 12-14 is/are rejected.
- 7) ☒ Claim(s) 4, 10 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 June 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-9 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kohlmann et al. in view of Miller.

In regard to claims 1, 2 and 12, the Kohlmann et al. reference discloses a water dispensing device having an "adjustable filling mechanism" 76 (see Figures 5 and 7) to adjust the nozzle 70 to the height of the container 75, but doesn't disclose having "identification means" to detect a vertical height of a container and to send out a height signal to a "control means" to control the filling of the container. However, the Miller reference discloses another liquid dispensing device having "identification means" to detect a "vertical height" of various sizes of containers and sends out a signal to control dispensing and filling of the container. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Kohlmann et al. device to have a vertical height detection means and control system as, for example, taught by Miller in order to further automate the device by detecting the vertical height of a receiving container and control the vertical adjustment of the dispensing nozzle.

In regard to claim 3, see column 2, lines 57-65 (Miller).

In regard to claim 5, see "sensors" 1 in Figures 2-4 (Miller).

In regard to claim 6, see column 5, lines 9-43 (Miller).

In regard to claims 7 and 8, see "light sensors" in column 2, lines 42-49 (Miller).

In regard to claim 9, inasmuch that is defined by "reading means", the rim of the cup meets the claimed limitation (Miller).

In regard to claims 13 and 14, the Miller system delivers beverage and would inherently have a plurality of filling lines, as claimed.

### ***Allowable Subject Matter***

Claims 4, 10 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments filed 6/12/07 have been fully considered but they are not persuasive.

Applicant argues that the Kohlmann reference in no way relates to collecting different dosable liquids that may have different filling needs. Water is simply dispensed in the Kohlmann device. Moreover, Kohlmann requires that the purified water be topped off with manual topping from an accumulator tank. Kohlmann is not suitable for use with multiple different liquids and containers that may have different optimal filling heights. Kohlmann does not require any sort of identification to associate a container with a particular liquid as it dispenses only water. Moreover, Kohlmann does not use both control means and identification means to fill various containers with various liquids. Although Miller uses a device for dispensing a liquid into a receptacle, it does not identify different liquids or move a spout. Miller relates to an optical detection method. However, Miller does not provide for dispensing more than one liquid from a particular spout or from as optimal height as the spout is stationary.

In response to the above argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies

Art Unit: 3751

(i.e., **identifying different liquids that may have different filling needs and associating a container with a particular liquid**) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Further, the identification means detects a container height to control the vertical height of the filling mechanism.

Applicant argues that although Miller does disclose identifying the height of a container, there is no need to adjust the height of a container, as it is used only for dispensing soft drinks, which do not need to vary in height as with other dosable liquids such as lattes, and/or cappuccinos.

In response to the above argument, it is well known that cups come in multiple sizes (i.e., small, medium and large) in the beverage dispensing industry and product being dispensed has no bearing on what size cup is being used.

Applicant argues that the control means is adapted to adjust the height of the filling mechanism into a waiting position once its height above the container is maximal after a filling procedure has been completed. There is no need in Miller for any sort of movement, as it is a stationary dispensing device.

In response to the above argument, it stands to reason that the filling mechanism would inherently position itself into a waiting position to receive the next signal.

Applicant argues that Kohlmann has no memory means and Miller is stationary, and that the combination of Kohlmann with Miller still does not achieve the present invention as neither reference teaches nor suggests control means for moving an adjustable filling mechanism and identification means for storing a plurality of filling heights in the memory.

In response to the above argument, see the above rejection for claim 3.

Applicant argues that neither Miller nor Kohlmann teach or suggest the combination of claim 1 with the identification means including at least one filling state sensor that sets a maximum filling state for the container when the container is being filled with foodstuff. Similarly, Applicants assert that claim 6 relating to the programmable memory is neither shown nor suggested when combined with claim 1.

In response to the above argument, see the above rejection for claims 5 and 6.

Applicant argues that sensors are not believed to be shown or suggested when combined with the dispensing device of claim 1, which is believed to be allowable for the reasons discussed above.

In response to the above argument, see the above rejection for claims 7 and 8.

Applicant argues that the identification means includes reading means to read information provided on the container. Applicants assert that this is neither shown nor suggested by Kohlmann and/or Miller or any combination thereof. Although Miller does teach light optical assemblies that detect the height of a cup, it is not capable of gathering any other information.

In response to the above argument, see the above rejection for claim 9.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

Art Unit: 3751

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy L. Maust whose telephone number is (571) 272-4891. The examiner can normally be reached on Mon. - Thur. 6:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4883. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Timothy L Maust/  
Primary Examiner  
Art Unit 3751